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December 10, 2004

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Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte Notice**

Consolidated Request for Review of Decisions of the Universal Service
Administrator, Morehouse Parish School District and Richland Parish
School District
CC Docket No. 02-6

Dear Ms. Dortch:

On December 9, 2004, Jennifer L. Kostyu and the undersigned of Morrison & Foerster LLP, on behalf of SEND Technologies, LLC ("SEND"), met with Jennifer Schneider, Dana Bradford and Greg Lipscomb of the Telecommunications Access Policy Division, Wireline Competition Bureau, regarding the above-referenced Request for Review.

The parties discussed the need for the Commission to quickly resolve whether the presence of certain perceived "similarities" in the Form 470 applications of various Louisiana schools for the 2002 E-rate Funding Year "suggests" impermissible service provider involvement in the competitive bidding process, as asserted by the Universal Service Administrative Company ("USAC"). Although the pending appeal concerns only the Year 2002 funding requests of Morehouse and Richland Parish School Districts, USAC has multiple cases pending before it for the 2002, 2003 and 2004 Funding Years for these and/or other Louisiana schools that have been or likely will be denied based upon the same perceived similarities. Accordingly, SEND's representatives stated that prompt action by the Commission in this case would forestall the needless expenditure of time and resources on the part of the Commission, USAC, the schools and SEND in litigating the same issue multiple times.

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As explained in the attached discussion points, the alleged “similarities” issue has arisen in three consecutive funding years because USAC did not rule on the schools’ Year 2002 applications for more than two years. During this two-year period, the schools filed Form 470 applications for the 2003 and 2004 Funding Years that were based on the Year 2002 applications. It was only after the Year 2003 and 2004 applications were filed that USAC denied the schools’ Year 2002 funding requests based upon alleged “similarities” in the schools’ applications. Thus, neither the schools nor SEND were aware that the perceived similarities from the 2002 Funding Year could taint the applications for subsequent years.

SEND’s representatives noted that USAC has proffered no proof that SEND or the schools actually violated the E-rate Program’s competitive bidding rules for the Year 2002 applications (or those of subsequent years), and that USAC concluded after two years of investigation only that the perceived similarities may “suggest” service provider involvement. SEND’s representatives stated that a review of the salient facts demonstrates that SEND was not impermissibly involved in the schools’ bidding processes and there were no actual rule violations. A prompt decision on this issue by the Commission would prevent USAC from improperly deciding numerous identical cases currently pending before it.

The parties also discussed whether Louisiana procurement law applies to the acquisition of certain Internet access services and internal connections by Louisiana schools, which is raised in the above-referenced Request for Review. Specifically, USAC denied Richland’s Year 2002 funding requests because it allegedly failed to comply with the competitive bidding requirements set forth in Title 38 of the Louisiana Revised Statutes (the state procurement law), as interpreted by USAC, when it sought bids for internal connections. USAC also denied the funding requests for Internet access services and internal connections of twelve other Louisiana schools based upon substantially identical Title 38 claims, the appeals of which are currently pending before the Commission. A list of the other Title 38 appeals is attached hereto.

Because compliance with state procurement requirements is arguably a matter of state law, local Louisiana counsel for Richland and the other school districts, who also represents the Louisiana School Boards Association, recently sought and obtained an opinion from the Louisiana Attorney General (“AG”) regarding the applicability of Title 38 to the purchase of Internet access services and internal connections.¹ A copy of the AG’s opinion is attached hereto. The AG opinion indicates that Internet access services are service contracts which are not subject to Title 38. Internal connections contracts could be subject to Title 38 if the contracts exceed certain threshold dollar amounts, but

¹ A copy of the request to the AG for an opinion was attached as Exhibit C to the Request for Review.

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the E-rate Program's competitive bidding process would meet the state's procurement requirements in any event. Richland's local counsel intends to supplement the Request for Review and the other pending Title 38 appeals with a detailed analysis of the AG opinion. SEND's representatives stated that the Commission's prompt decision with regard to USAC's Title 38 allegations would bring to a close multiple pending Title 38 appeals and provide needed guidance to USAC and E-rate applicants regarding the applicability of Louisiana procurement requirements going forward.

Pursuant to Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed with the office of the Secretary. If you have any questions regarding this notification, please contact the undersigned.

Very truly yours,

/s/ Jennifer L. Richter

Jennifer L. Richter
Counsel to SEND Technologies, LLC

Attachments

cc: Jennifer Schneider
Dana Bradford
Greg Lipscomb